

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

TREASURER OF THE STATE OF MISSOURI-CUSTODIAN OF THE 2ND INJURY FUND,
Appellant

v.

ABBY COUCH, DECEASED; BILLY COUCH
Respondent

DOCKET NUMBER WD78312

DATE: OCTOBER 27, 2015

Appeal From:

Labor and Industrial Relations

Appellate Judges:

Division Special Division
James E. Welsh, P.J., Anthony Rex Gabbert, J., Robert Clayton, Sp. J.

Attorneys:

Brian Herman, Jefferson City, MO, Counsel for Appellant

Attorneys:

Christine Michele Keifer, Jefferson City, MO Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**TREASURER OF THE STATE OF
MISSOURI-CUSTODIAN OF THE 2ND
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Labor and Industrial Relations

The Treasurer of the State of Missouri as custodian of the Second Injury Fund (“SIF” or “the Fund”) appeals the decision of the Labor and Industrial Relation Commission (“Commission”) in favor of Abby Couch on her claim for workers’ compensation benefits.

SIF first contends that the Commission erred by finding Couch to have timely filed her claims against the Fund and in awarding her benefits from the Fund because it improperly interpreted Section 287.430. SIF argues that Section 287.430 requires a claim against the Fund to be filed “within two years after the date of the injury or within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later,” and this language does not provide that a claim against the Fund may be filed within one year from entering into a stipulation of settlement with an employer, as the Commission found.

Second, SIF contends that the Commission erred by finding that the filing of Couch’s settlement stipulations with her employer constituted “a claim” as used in Section 287.430 because such a construction is not applicable here, in that Couch filed actual claims for compensation against her employer.

REVERSED

Special Division holds:

In reaching its decision that Couch had timely filed a claim against SIF, the Commission erred in relying upon the holdings of *Grubbs v. Treasurer of Missouri as Custodian of the Second Injury Fund*, 298 S.W.3d 907 (Mo. App. E.D. 2009), *Treasurer of the State of Missouri-*

Custodian of the Second Injury Fund v. Cook, 323 S.W.3d 105 (Mo. App. W.D. 2010), and *Elrod v. Treasurer of Missouri as Custodian of the Second Injury Fund*, 138 S.W.3d 714 (Mo. banc 2004) because these cases were inapposite to Couch’s case. The filing of Couch’s settlement agreement did not fall within the exceptions carved out by these cases so it did not constitute the filing of “a claim” against her employer within the meaning of Section 287.430. Accordingly, the Commission erred in finding that her claim against SIF was timely filed.

Opinion by Anthony Rex Gabbert, Judge

Date: 10/27/15

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